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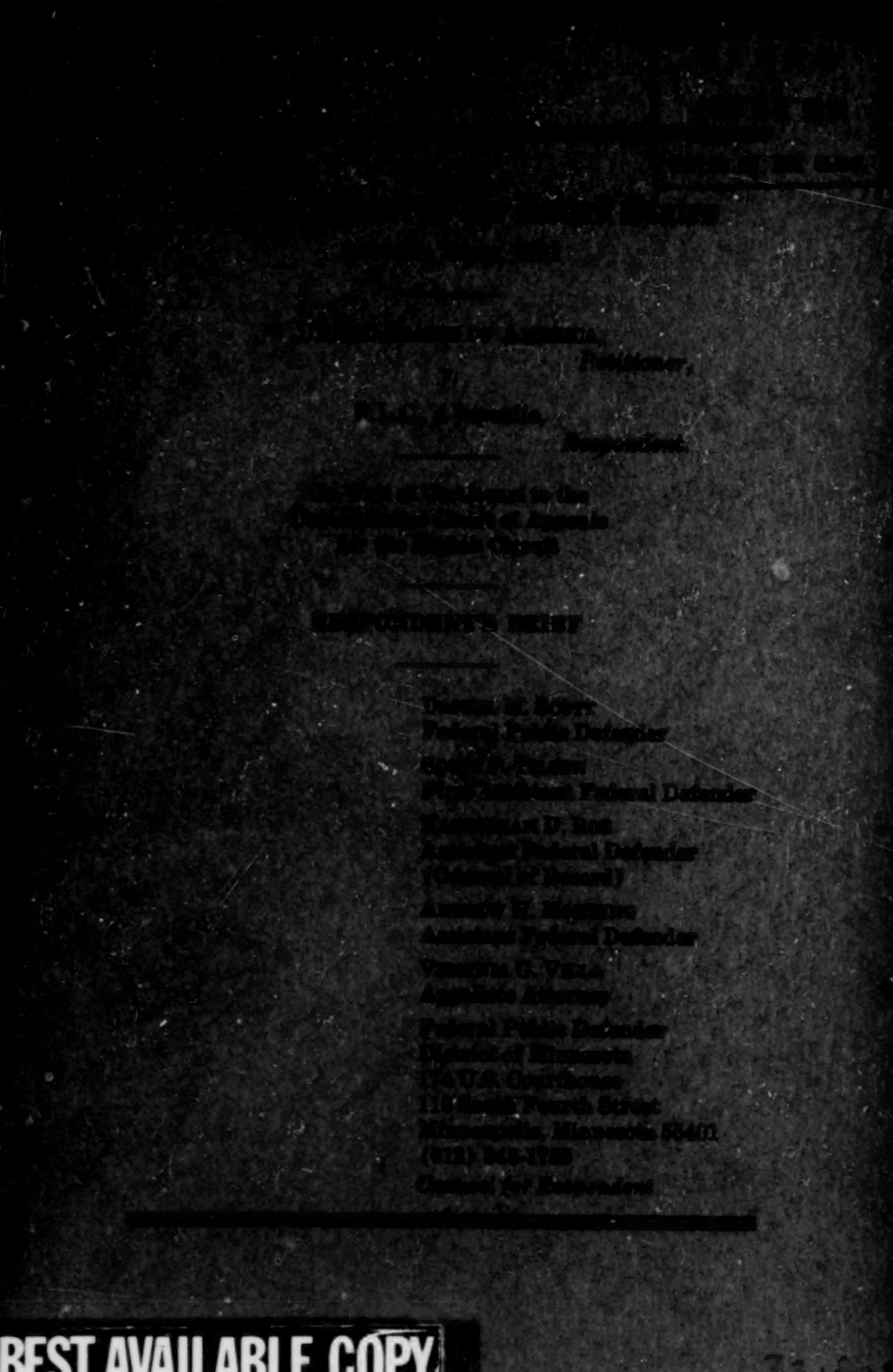

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

No. 90-1577

UNITED STATES OF AMERICA,
Petitioner,

v.

R.L.C., a juvenile,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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RESPONDENT'S BRIEF

STATUTORY PROVISIONS INVOLVED

The Federal Juvenile Delinquency Act, 18 U.S.C. 5037, provides, in part, as follows:

> (a) If the court finds a juvenile to be a juvenile delinquent, the court shall hold a disposition hearing concerning the appropriate disposition no later than twenty court days after the juvenile delinquency hearing unless the court has ordered further study pursuant to subsection (d). After the disposition hearing, and after considering any pertinent policy statements promulgated by the Sentencing Commission pursuant to 28 U.S.C. 994, the court may suspend the findings of juvenile delinquency, enter an

order of restitution pursuant to section 3556, place him on probation, or commit him to official detention.
* * *

* * * *

(c) The term for which official detention may be ordered for a juvenile found to be a juvenile delinquent may not extend—

(1) in the case of a juvenile who is less than eighteen years old, beyond the lesser of—

(A) the date when the juvenile becomes twenty-one years old; or

(B) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult; or

(2) in the case of a juvenile who is between eighteen and twenty-one years old—

(A) who if convicted as an adult would be convicted of a Class A, B, or C felony, beyond five years; or

(B) in any other case beyond the lesser of—

(i) three years; or

(ii) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult.

Section 3621 is applicable to an order placing a juvenile under detention.

STATEMENT

1. R.L.C., a seventeen-year-old boy, is a member of the Red Lake Band of Chippewa Indians. He grew up on the Red Lake Indian Reservation in northern Minnesota.[1]

2. On the night of November 4, 1989, R.L.C. and another youth attended an adult party and were drinking

[1] 12/21/89 Tr. at 6, 235.

alcoholic beverages. The youths left the party at approximately 11:30 p.m.[2] At approximately 12:15 a.m., November 5, the youths came upon a Chevrolet Camaro with the keys in the ignition. They took the car and began driving around the Reservation.[3] At approximately 12:23 a.m., the driver of the Camaro ran into the rear end of a car in which LaTesha Mountain was a passenger.[4] As a result of the injuries sustained in the accident, LaTesha died a few days later.[5]

3. On November 27, 1989, R.L.C. was charged in a federal Information with involuntary manslaughter. The other youth, the son of a tribal law enforcement officer, was not charged with any offense.[6]

4. A bench trial began on December 21, 1989, and concluded on December 26, 1989. Although there was considerable dispute about who was actually driving at the time, the district court determined that R.L.C. had been driving the vehicle which caused the accident resulting in LaTesha Mountain's death and found that the Government had established R.L.C.'s guilt beyond a reasonable doubt.[7]

5. As R.L.C. was sixteen years old at the time of the offense, the court adjudged R.L.C. to be a juvenile delinquent.[8]

[2] 12/21/89 Tr. at 249-253.

[3] 12/21/89 Tr. at 256-257.

[4] 12/21/89 Tr. at 15.

[5] 12/21/89 Tr. at 6, 44-45.

[6] 12/21/89 Tr. at 229.

[7] 12/26/89 Tr. at 318.

[8] 1/24/90 Tr. at 8-9.

6. The court held a disposition hearing pursuant to 18 U.S.C. § 5037 on January 24, 1990, and sentenced R.L.C. to thirty-six months detention,[9] the maximum penalty available for involuntary manslaughter under 18 U.S.C. § 1112(a). R.L.C. appealed his conviction and sentence.

7. On January 24, 1991 the Eighth Circuit Court of Appeals affirmed R.L.C.'s conviction but reversed the court's sentencing decision, holding that the district court could not sentence R.L.C. to a term of detention greater than that he would have received as an adult offender under the Federal Sentencing Guidelines. The court remanded the case for resentencing.[10]

8. At resentencing, the Government requested that R.L.C. be imprisoned for the maximum Guidelines sentence of 21 months, but did not argue that an upward departure was merited.[11] The district court considered the factors relevant to sentencing and imposed a sentence of 18 months.[12]

9. R.L.C. completed his 18 month sentence on March 20, 1991 and returned to the Red Lake Indian Reservation. He graduated from Red Lake High School in May 1991.[13]

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[9] 1/24/90 Tr. at 10.

[10] Resp. App. 12a-14a.

[11] 1/25/91 Tr. at 15-16.

[12] 1/25/91 Tr. at 16-17.

[13] App., *infra*, 1a-3a.

SUMMARY OF ARGUMENT

A. The question presented by this case is straightforward: what do the words "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult" mean in 18 U.S.C. § 5037(c)(1)(B)? The answer is equally straightforward. If R.L.C. had been tried and convicted as an adult, the district court's discretion to impose the statutory maximum would have been limited by the provisions of the Federal Sentencing Guidelines. Accordingly, the plain language of subsection 5037(c)(1)(B) means that a sentencing court is restricted from imposing the statutory maximum on a juvenile offender where the Sentencing Guidelines prescribe a lesser sentence for an adult offender. Because the Eighth Circuit Court of Appeals reached this conclusion, its decision should be affirmed.

In construing a statute, a court must first look to the language of the statute itself and then to the legislative history if the statutory language is not clear. Although the plain language of this subsection indicates that juvenile sentences are limited by the Guidelines' maximum, the two terms arguably subject to construction are the word "authorize" and the phrase "maximum term of imprisonment".

It is a fundamental maxim of statutory construction that, absent compelling reasons to the contrary, words should be given their normal or usual meaning. Under normal usage, the word "authorize" means to give permission for or to be sufficient grounds for an act. The Guidelines "authorize" a term of imprisonment insofar as the Sentencing Commission has been granted the authority to set sentencing policy within statutory limits. This authority is exercised by way of the Sentencing Guidelines which commonly set maximum sentences below the statutory maximum for specified categories of offenders. A maximum sentence authorized by the Guidelines

which is below the statutory maximum is enforceable at law as a sentencing court's failure or refusal to abide by the Guidelines is reversible error. Therefore, the maximum sentence "authorized if the juvenile had been tried and convicted as an adult" is the Guidelines' maximum.

In construing the words of a statute, a court must adopt a construction which gives meaning to all of the words of a statute and should avoid any construction which renders words superfluous or redundant. In 18 U.S.C. § 5037(c)(1)(B), Congress qualified the phrase "maximum term of imprisonment" with the clause "if the juvenile had been tried and convicted as an adult". Elsewhere in Title 18, Congress has specified that the phrase "maximum term of imprisonment" refers only to the statutory maximum or has attached other modifying clauses to this phrase. Any effort to construe the phrase "maximum term of imprisonment" narrowly to mean only the statutory maximum would render the qualifying language used in 18 U.S.C. § 5037(c)(1)(B) and other sections of Title 18 superfluous, irrelevant or redundant and therefore should be avoided.

B. A court's duty in interpreting statutory language is to find that interpretation which can most fairly be said to be imbedded in the statute, in the sense of being the most harmonious with its scheme and with its general purposes.

When it enacted the Federal Juvenile Delinquency Act (FJDA) in 1938, Congress limited maximum sentences for juveniles to the maximum that an adult offender could receive. The same basic juvenile sentencing structure remained in effect until 1984, when Congress amended the FJDA in the Comprehensive Crime Control Act (CCCA), the Sentencing Guidelines' enacting legislation.

Although juvenile delinquents have always been sentenced in reference to the maximum sentence available

for an adult offender, Congress created a new category of "youthful offender" in 1950 by enacting the Youth Corrections Act (YCA). The YCA was premised on the idea that, by offering rehabilitation programs to youthful offenders, such offenders would not become career criminals. Under the alternative sentencing structure of the YCA, a youthful offender could serve a greater sentence than that allowed for a similarly situated adult under certain circumstances. Courts upheld the longer sentences due to the rehabilitative nature of the YCA.

In the Comprehensive Crime Control Act of 1984, Congress rejected the rehabilitative model of sentencing and repealed the YCA in its entirety, including its alternative sentencing structure. Congress also amended the sentencing provisions of the FJDA and explicitly stated that juvenile sentences should reflect the real time a similarly situated adult offender would serve. Given the CCCA's central purpose of creating determinate sentences for adults through the Sentencing Guidelines, construing the language of subsection 5037(c)(1)(B) to refer to the Guidelines' maximum would comport with and advance the purpose of the most recent amendments to the FJDA.

C. Viewed in light of established principles of statutory construction, 18 U.S.C. § 5037(c) limits juvenile sentences to the maximum set by the Sentencing Guidelines. However, to the extent that any ambiguity lingers in the meaning of the FJDA's sentencing provisions, the Rule of Lenity requires that juvenile delinquents be incarcerated no longer than the maximum sentence an adult offender could receive under the Sentencing Guidelines.

ARGUMENT

THE MAXIMUM SENTENCE A JUVENILE MAY RECEIVE UNDER 18 U.S.C. § 5037(c)(1)(B) IS THE MAXIMUM SENTENCE SPECIFIED BY THE FEDERAL SENTENCING GUIDELINES FOR AN ADULT OFFENDER CONVICTED OF THE SAME CRIME UNDER SIMILAR CIRCUMSTANCES

The question presented by this case is straightforward: what do the words "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult" mean as Congress used them in 18 U.S.C. § 5037(c)(1)(B)? The answer is equally straightforward. If R.L.C. had been tried and convicted as an adult, the district court's discretion to impose the statutory maximum would have been limited by the provisions of the Sentencing Guidelines.[14] Accordingly, the plain language of subsection 5037(c)(1)(B) means that a sentencing court is restricted from imposing the statutory maximum on a juvenile offender where the Sentencing Guidelines prescribe a lesser sentence for an adult offender.[15] Because the Eighth Circuit Court of Appeals reached this conclusion, its decision should be affirmed.

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[14] Although a court can make an upward departure from the maximum sentence suggested by the Guidelines and impose the statutory maximum, the Guidelines limit the circumstances in which this is appropriate. The Guidelines were constructed to reserve the upper ranges and the statutory maximum "for offenders who repeatedly commit offenses or those who commit an offense under particularly egregious circumstances." S. Rep. No. 225, 98th Cong., 2d Sess. 37, 114, *reprinted in* 1984 U.S. Code Cong. & Ad. News 3220, 3297. An upward departure is reviewable on appeal under 18 U.S.C. § 3742(a)(3).

[15] R.L.C. acknowledges that the Eighth Circuit's holding effectively ties juvenile sentencing to the Sentencing Guidelines. Such an effect is not surprising given that Congress directly incorporated the Guidelines' policy statements in amending 18 U.S.C. § 5037(a). The legislative history regarding the role of policy statements indicates that Congress "expected that the policy statements will be consulted at all stages of the criminal justice system, including the

A. The Plain Language Of 18 U.S.C. § 5037(c)(1)(B) Means The Maximum Sentence Available For A Juvenile Delinquent Is The Maximum Sentence Authorized By The Guidelines For A Similarly Situated [16] Adult Offender

Title 18, U.S.C., § 5037(c)(1) reads: "The term for which official detention may be ordered for a juvenile found to be a juvenile delinquent may not extend . . . beyond the lesser of (A) the date when the juvenile becomes twenty-one years old; or (B) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult . . . ." Although the plain language of this subsection indicates that juvenile sentences are limited by the Guidelines' maximum, the two terms arguably subject to construction are the word "authorized" and the phrase "maximum term of imprisonment".

1. *The Sentencing Commission has the authority to set maximum sentences below the statutory maximum*

It is a fundamental maxim of statutory construction that a court's ability to adopt a restricted meaning of words rather than their usual meaning is limited to oc-

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appellate courts, in evaluating the appropriateness of the sentence and corrections program applied to a particular case." S. Rep. No. 225, 98th Cong., 2d Sess. at 167-168, *reprinted in* 1984 U.S. Code Cong. & Ad. News at 3350-3351. Therefore, the incorporation of the policy statements in subsection 5037(a) clarifies Congress' intent that such statements be considered at all stages of the criminal justice system, *including juvenile delinquency cases.* Furthermore, Congress' use of the Guidelines' policy statements in guiding the disposition of juvenile cases under subsection 5037(a) supports the conclusion that Congress also intended to incorporate the Guidelines to limit the maximum sentence available under subsection 5037(c)(1)(B).

[16] Respondent uses the phrase "similarly situated" to refer to an offender who has the same base offense level, specific offense characteristics and criminal history category. This phrase also accounts for any aggravating circumstances which would merit an upward departure from the Guidelines' range.

casions where acceptance of the usual meaning would lead to absurd results or would thwart the obvious purpose of the statute. *In Re Trans Alaska Pipeline Rate Cases*, 436 U.S. 631, 643 (1978). Otherwise, where no such consequences would follow and where it appears to be consonant with the purposes of the Act, words are to be given their normal or usual meaning. *Id.* In the case at bar, this Court should construe the word "authorized" to refer to the maximum term of imprisonment provided by the Sentencing Guidelines, rather than only that set forth in the statute describing the offense, as such construction would give the word its normal meaning and would comport with the purposes of the statute.

Under normal usage, the word "authorize" means to give permission for or to be sufficient grounds for an act. *See* Morris, ed., *American Heritage Dictionary of the English Language* 89 (New College Ed. 1976). Before Congress enacted the Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, Title II, 98 Stat. 1976 (1984), which created the Sentencing Commission and authorized the establishment of the Sentencing Guidelines, a trial court had the discretion to impose a sentence anywhere within the statutory limits set by Congress.[17] The scope of a sentencing court's discretion has been significantly narrowed by the Sentencing Guidelines. Indeed, the Guidelines carry the force of law and a district court's failure or refusal to abide by the Guidelines constitutes reversible error.[18] As the Guidelines "permit" or "establish grounds for" a particular sentence, they "authorize" a maximum sentence within the normal, everyday meaning of that word.

[17] *See generally*, S. Rep. No. 225, 98th Cong., 2d Sess. at 39-40, *reprinted in* 1984 U.S. Code Cong. & Ad. News at 3222-3223 for a review of prior sentencing practices.

[18] *See* 18 U.S.C. 3742; *Mistretta v. United States*, 488 U.S. 361, 367 (1989) (guidelines meant to establish range of determinate sentences); *United States v. Mejia-Orosco*, 867 F.2d 216, 218 (5th Cir. 1989) (incorrect application of the Sentencing Guidelines must be reversed); *United States v. Diaz-Villafane*, 874 F.2d 43, 48 n.4 (1st Cir. 1989) (appellate court must set aside a sentence imposed as an incorrect application of the Sentencing Guidelines); U.S.S.G. § 1B1.7 (failure to follow commentary explaining how guideline is to be applied could constitute incorrect application of guidelines, subjecting sentence to possible reversal).

The Comprehensive Crime Control Act's legislative history supports giving the word "authorize" its normal meaning and makes it clear that Congress believed that the Sentencing Commission would have the authority to establish sentencing policy within the statutory limits. *See* S. Rep. No. 225, 98th Cong., 2d Sess. at 64, *reprinted in* 1984 U.S. Code Cong. & Ad. News at 3247 (describing the Sentencing Commission "as the body to which Congress will be delegating some of its authority to set sentencing policy"). This delegation is consistent with Congress' recurrent practice of assigning portions of its authority to other administrative entities.[19] Indeed, this

[19] *See, for example, Lichter v. United States*, 334 U.S. 742, 785-786 (1948) (upholding delegation of authority to determine excessive profits); *American Power & Light Co. v. SEC*, 329 U.S. 90, 105 (1946) (upholding delegation of authority to SEC to prevent unfair or inequitable distribution of voting power among security holders); *Yakus v. United States*, 321 U.S. 414, 426 (1944) (upholding delegation to administrator to fix commodity prices that would be fair and equitable, and would effectuate the purposes of the Emergency Price Control Act of 1942); *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 600 (1944) (upholding delegation to Federal Power Commission to determine just and reasonable rates); *National Broadcasting Co. v. United States*, 319 U.S. 190, 225-226 (1943) (upholding delegation to the Federal Communications Commission to regulate broadcast licensing "as public interest, convenience, or necessity" require); *National Petroleum Refiners Assn. v. F.T.C.*, 482 F.2d 672 (D.C. Cir. 1973) (Federal Trade Commission Act conferred on FTC authority to promulgate trade regulation rules which have the effect of substantive law).

Court has already held that Congress properly delegated part of its sentencing authority to the Sentencing Commission. *Mistretta v. United States*, 488 U.S. 361, 374 (1989) (Congress' delegation of authority to Sentencing Commission sufficiently specific to meet constitutional requirements). Given the Comprehensive Crime Control Act's overall purpose of limiting a court's sentencing discretion by establishing determinate sentences and given the explicit adoption of the Guidelines' policy statements in juvenile proceedings under section 5037(a),[20] the term "authorized" in subsection 5037(c)(1)(B) plainly indicates the Sentencing Commission's delegated authority to create maximum sentences below the statutory limits.

The Government's arguments that the word "authorize" should be given a restricted interpretation meaning only "general congressional sentencing authority" and that the Guidelines do not "authorize" a sentence distort the normal meaning of the word. These arguments ignore the congressional intent underlying the Guidelines as well as the Guidelines' practical and legal effect. Furthermore, the Government's arguments simply do not comport with the way Congress has used the term, Congress' stated intent in establishing the Sentencing Commission, and this Court's prior interpretation of the Comprehensive Crime Control Act. Accordingly, the Government's argument that the word "authorized" should be narrowly construed must be rejected.

2. *Congress qualified the phrase "maximum term of imprisonment" with the clause "if the juvenile had been tried and convicted as an adult" to signify the maximum term available under the Sentencing Guidelines*

It is a basic tenet of statutory construction that "[a]ll words and provisions of statutes are intended to have meaning and are to be given effect, and no construction

[20] *See* footnote 15 at 8-9, *supra*.

should be adopted which would render statutory words or phrases meaningless, redundant or superfluous." *United States v. Ven-Fuel, Inc.*, 758 F.2d 741, 751-752 (1st Cir. 1985). *See also, Jarecki v. Searle & Co.*, 367 U.S. 303, 307-308 (1961) (courts should give effect to all provisions of a statute and should not adopt a strained reading which renders one part a mere redundancy). The only construction of the statute in controversy which will give all of its words meaning is the construction provided by the Eighth Circuit.

Subsection 5037(c)(1)(B) specifies that the maximum sentence a court can impose on a juvenile delinquent is "the maximum term of imprisonment *that would be authorized if the juvenile had been tried and convicted as an adult; . . .*" (emphasis added).[21] Congress' specification that the phrase "maximum term of imprisonment" means the maximum an adult would receive if convicted supports the conclusion that Congress meant something other than just the statutory maximum in section 5037. In enacting 18 U.S.C. § 3559(b) (sentencing classification of offenses), Congress wrote, "the maximum term of imprisonment *is the term authorized by the law describing the offense*." (Emphasis added.) The drafters evidently felt that "maximum term of imprisonment" did not exclusively refer to the statutory maximum and therefore clarified their intent by adding the supplemental language

[21] Section 5037 previously provided, in relevant part, that "commitment . . . shall not extend beyond . . . the maximum term which could have been imposed on an adult *convicted of the same offense*, ..." 18 U.S.C. § 5037(b) (1982) (emphasis added.) Although the 1984 amendment continued the practice of sentencing juveniles in reference to the maximum term available for an adult, Congress deleted any reference to sentencing pursuant to an offense. Since pursuant to the Act the maximum term of imprisonment authorized for an adult offender would be determined in reference to the Sentencing Guidelines, the qualifying language contained in subsection 5037(c)(1)(B) only makes sense in reference to the maximum term of imprisonment authorized by the Sentencing Guidelines.

emphasized above. Congress obviously can specify that it means only the statutory maximum when it so desires. Accordingly, it is significant that Congress did not include any modifying language which would indicate that the only limit in juvenile sentence is the statutory maximum.

In addition to 18 U.S.C. §§ 3559(b) and 5037(c)(1)(B), several other sections of Title 18 contain the phrase "maximum term of imprisonment". *See* 18 U.S.C. §§ 3, 373, 3142(e), 3156(a)(3).[22] In these sections, Congress used qualifying phrases to specify either the statutory maximum or some other maximum.[23] The fact that Con-

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[22] R.L.C. uses these sections as the Government refers to them in its brief. *See* Pet. Br. at 17, n.3. This is not meant to be an exhaustive list, but is merely representative of the way Congress varies its use of the phrase "maximum term of imprisonment".

[23] For example, in section 3142(e) (pretrial detention) the phrase "maximum term of imprisonment" is used in reference to certain enumerated statutes and therefore means the statutory maximum. Similarly, section 3156(a)(3) (defining "felony" as used in §§ 3141-3150) refers to "an offense", and by extension the statute creating the offense, which thereby modifies the phrase "maximum term of imprisonment" to mean the statutory maximum.

Conversely, sections 3 (accessory after the fact) and 373 (solicitation of a crime of violence) use "maximum term of imprisonment" in reference to half of the maximum available for the principal or for the offense solicited, respectively. Although these sections reference other offenses, as a practical matter the "maximum term of imprisonment" under these sections is calculated with reference to the Guidelines' maximum for the principal or the underlying offense rather than the statutory maximum. *See* U.S.S.G. § 2X3.1.(a) (base offense level for 18 U.S.C. § 3 set six levels below that for the underlying offense); U.S.S.G. § 2X5.1 (most analogous guideline applies where no specific guideline exists). The Sentencing Commission obviously did not consider these statutes to require that half of the statutory maximum be imposed and instead keyed the maximum sentence to the Guidelines' range for the underlying offense. Therefore, "maximum term of imprisonment" as used in 18 U.S.C. §§ 3 and 373 does not exclusively mean the statutory maximum.

gress used modifying language not only in subsections 3559(b) and 5037(c)(1)(B) but also in each of these additional sections demonstrates that the naked phrase "maximum term of imprisonment" in and of itself does not invariably mean the statutory maximum. When Congress means the maximum term of imprisonment to be the statutory maximum, it specifically says so.

If "the maximum term of imprisonment" were construed as invariably meaning the statutory maximum, the phrase "if the juvenile had been tried and convicted as an adult" contained in subsection 5037(c)(1)(B) would become a nullity because the only "maximum term of imprisonment authorized" would be the statutory maximum. Furthermore, Congress would have had no need to include the clause "except that the maximum term of imprisonment is the term authorized by the law describing the offense" in 18 U.S.C. § 3559(b) and this phrase would become superfluous. Finally, the qualifying phrases used in conjunction with "maximum term of imprisonment" found throughout Title 18 would become nullities or mere redundancies because the "maximum term of imprisonment" could have but one meaning. Accordingly, this construction would do affirmative violence to the statutes as written and must be rejected.

B. The History Of The Laws Pertaining To Juvenile Offenders And The Legislative History Of 18 U.S.C. § 5037 Support The Conclusion That Juveniles Can Receive A Sentence No Longer Than The Maximum Sentence An Adult Offender Could Receive Under The Sentencing Guidelines

A court's duty in interpreting statutory language is to find that interpretation which can most fairly be said to be imbedded in the statute, in the sense of being the most harmonious with its scheme and with the general purposes that Congress manifested. *C.I.R. v. Engle*, 464 U.S. 206, 217 (1984). The ensuing review of the history of the

Federal Juvenile Delinquency Act,[24] as amended, and the Youth Corrections Act,[25] confirms that the Eighth Circuit's decision is in harmony with the policies underlying the Federal Juvenile Delinquency Act, as amended.

Congress first recognized a need to treat juvenile offenders separately from adult offenders when it passed the Federal Juvenile Delinquency Act in 1938. This Act governs the disposition of persons under the age of eighteen years who commit offenses against the laws of the United States and provides that juveniles are to be placed apart from adult offenders, giving the Director of the Bureau of Prisons the authority to contract with public or private agencies for the custody, care, subsistence, education and training of juvenile delinquents. *See* 18 U.S.C. §§ 5031 *et seq.* As originally enacted, a person adjudged to be a juvenile delinquent could be placed on probation or committed to the custody of the Attorney General for a period "not exceeding the minority of the juvenile, and in no event exceeding the term for which the juvenile could have been sentenced if he had been tried and convicted of the offense which he had committed." Pub. L. No. 75-666, ch. 486, § 4, 52 Stat. 765.[26]

In 1950, Congress expanded the provisions specifically designed for young adult offenders by passing the Youth

[24] Pub. L. No. 75-666, ch. 486, 52 Stat. 764 (1938).

[25] Pub. L. No. 81-865, ch. 115, § 2, 64 Stat. 1086 (1950).

[26] Congress amended this provision in the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, Title V, 88 Stat. 1095, changing the above quoted language to read that probation or commitment "shall not extend beyond the juvenile's twenty-first birthday or the maximum term which could have been imposed on an adult convicted of the same offense . . ." *Id.*, § 507, 88 Stat. 1136. There is no legislative history concerning this change in wording. However, it appears that this was merely a change in form since the Sentencing Guidelines had not been formulated and therefore adults were subject to the statutory maximum at the time.

Corrections Act. This Act created a Youth Correction Division within the Board of Parole (later the Parole Commission), *see* 18 U.S.C. § 5005 (1982), applied to persons under the age of twenty-two years at the time of conviction, *see* 18 U.S.C. § 5006 (1982)[27] and provided an alternative sentencing structure for young adult offenders. *See* 18 U.S.C. § 5010(b) (1982) (court may, in lieu of penalty of imprisonment otherwise provided by law, sentence youth offenders to custody of Attorney General for treatment and supervision pursuant to this chapter).

The Act was designed to "promote the rehabilitation of those who in the opinion of the sentencing judge show promise of becoming useful citizens, and so . . . avoid the degenerative and needless transformation of many of these young persons into habitual criminals." H.R. Rep. No. 2979, 81st Cong., 2d Sess. 1, *reprinted in* 1950 U.S. Code Cong. & Ad. News 3983. The Act was to accomplish this purpose by "provid[ing] for the youthful offenders committed . . . by the courts a system of analysis, treatment, and release that will cure rather than accentuate the anti-social tendencies that have led to the commission of crime." *Id.* Under this system, a young adult offender could be sentenced to a period of detention greater than the statutory maximum for the underlying crime, up to a period of six years.[28] *See Carter v. United States*, 306

[27] Although section 5006 defined a "youth offender" as a person under the age of twenty-two at the time of conviction, this Act did not apply to juvenile delinquents as the adjudication of a juvenile as a delinquent is a determination of status rather than a criminal conviction. *See United States v. Frasquillo-Zomosa*, 626 F.2d 99, 101 (9th Cir.), *cert. denied*, 449 U.S. 987 (1980). R.L.C. includes a discussion of the Youth Corrections Act in this section since the history of this Act supports the conclusion that, by enacting the Comprehensive Crime Control Act, Congress intended to reduce sentencing disparities for all categories of offenders.

[28] If the statute defining the underlying offense provided for a sentence greater than six years, a sentencing court could detain

F.2d 283 (D.C.Cir. 1962) (sentence under Youth Corrections Act in cases of misdemeanors may be longer than one year due to rehabilitative nature of detention under Act).

In 1976 Congress amended the Youth Corrections Act by passing the Parole Commission and Reorganization Act, Pub. L. No. 94-233 § 3, 90 Stat. 231. Congress enacted this legislation to "reorganize the Federal paroling structure to replace the present United States Board of Parole with the U.S. Parole Commission, and to make certain changes in parole and procedures." S. Rep. No. 369, 94th Cong., 2d Sess. 1, 14, *reprinted in* 1976 U.S. Code Cong. & Ad. News 335. Congress reorganized the federal parole system with the intent that "offenders sentenced for similar crimes under similar circumstances will be required to serve comparable periods of incarceration." *Id.* at 18, *reprinted in* 1976 U.S. Code Cong. & Ad. News at 340. Congress made it clear that decisions regarding parole of young adult offenders would be made in the manner prescribed for all offenders. *Id.* at 28-29, *reprinted in* 1976 U.S. Code Cong. & Ad. News at 350. As such, this bill represents Congress' first attempt to equalize the terms of imprisonment served by youthful and adult offenders.[29]

Dissatisfied with the results obtained under the parole system, Congress passed the Comprehensive Crime Control Act of 1984, which phased out the Parole Commission and curtailed the sentencing discretion of judges. In passing this Act, Congress recognized that

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a youth within the youth corrections system for the maximum term provided for by statute, but could not otherwise exceed the statutory maximum. *See* 18 U.S.C. 5010(c) (1982).

[29] However, this reform did not affect the sentencing provisions applicable to youthful offenders, and a court could still impose a term of incarceration on a youthful offender greater than the maximum term of imprisonment for the underlying crime, but only up to a period of six years. *See, for example, United States v. Donelson,* 695 F.2d 583 (D.C. Cir. 1982).

> The sentencing provisions of current law were originally based on a rehabilitation model in which the sentencing judge was expected to sentence a defendant to a fairly long term of imprisonment. The defendant was eligible for release on parole after serving one-third of his term. The Parole Commission was charged with setting his release date if it concluded that he was sufficiently rehabilitated. At present, the concepts of indeterminate sentencing and parole release depend for their justification exclusively upon this model of "coercive" rehabilitation—the theory of correction that ties prison release dates to the successful completion of certain vocational, educational, and counseling programs within the prisons.
>
> Recent studies suggest that this approach has failed, and most sentencing judges as well as the Parole Commission agree that the rehabilitation model is not an appropriate basis for sentencing decisions. We know too little about human behavior to be able to rehabilitate individuals on a routine basis or even to determine accurately whether or when a particular prisoner has been rehabilitated. Until the present sentencing statutes are changed, however, judges and the Parole Commission are left to exercise their discretion to carry out what each believes to be the purposes of sentencing.

S. Rep. No. 225, 98th Cong., 2d Sess. at 40, *reprinted in* 1984 U.S. Code Cong. & Ad. News at 3223 (footnotes omitted). Congress rejected the rehabilitation model and repealed the alternative sentencing structure created by the Youth Corrections Act, amending the Federal Juvenile Delinquency Act to provide that "[t]he term for which official detention may be ordered for a juvenile found to be a juvenile delinquent may not extend . . . beyond the lesser of (A) the date when the juvenile becomes twenty-one years old; or (B) the maximum term of imprisonment that would be authorized if the juvenile

had been tried and convicted as an adult . . . ." 18 U.S.C. § 5037(c)(1).[30]

Congress' stated purpose for this change was to amend the laws relating to juvenile delinquency "in order to conform [them] to the changes made in adult sentencing laws." S. Rep. No. 225, 98th Cong., 2nd Sess at 155, *reprinted in* 1984 U.S. Code Cong. & Ad. News at 3338. Furthermore, the legislative history tells us that Congress "expected that the time set at the disposition hearing for a juvenile placed in the custody of the Attorney General . . . will represent *the real time to be spent by the juvenile in a manner similar to that for adult offenders under the bill.*" *Id.* at 156, *reprinted in* 1984 U.S. Code Cong. & Ad. News at 3339 (emphasis added).[31] The

[30] The amendment as originally passed made reference to section 3581(b). *See* 18 U.S.C. § 5037(c) (1985). In the Criminal Law Technical Amendment Act, Pub. L. No. 99-646, § 21(a), 100 Stat. 3596 (1986), Congress deleted the reference to subsection 3581(b) as an incorrect cross reference. *See* H.R. Rep. No. 797, 99th Cong., 2d Sess. 21 (1986). The Congressional Record states that "deleting the reference to section 3581(b) will tie the maximum sentences for juveniles to the maximum for adults, rather than making juvenile sentences more severe than adult sentences." 131 Cong. Rec. 14,177 (1985). Congress also amended this section specifically to allow juveniles to earn "good time" and stated that "[i]f terms of incarceration for juveniles are to be made fully determinate, as they are in the Comprehensive Act, there is little justification for making juvenile sentences more severe than adult sentences." *Id.* Considering that juvenile sentences historically have been limited to the maximum available for adults, it makes sense that Congress was referring here to adult sentences under the Guidelines rather than to the statutory maximum.

[31] The deleted portion of this quotation refers to 18 U.S.C. § 5037(b), which relates to placing juveniles on probation after the 1984 amendments. It is likely that the reference to subsection 5037(b) (instead of subsection (c)) was a misprint, since Congress typically uses the phrase "committed to the custody of the Attorney General" to mean official detention rather than probation. *See, for example,* Federal Juvenile Delinquency Act, Pub. L. No. 75-666, ch. 486, § 4, 52 Stat. 765 (person proceeding as juvenile can be

record reflects that Congress intended juvenile sentences to be limited to the maximum sentence provided for an adult under the Guidelines when it drafted the amendments to 18 U.S.C. § 5037.

The Government argues that the Eighth Circuit was unduly concerned with avoiding disparate terms of imprisonment for juvenile and adult offenders and that such concern did not support the Eighth Circuit's decision. The Government reasons that a juvenile sentenced under 18 U.S.C. § 5037 is in a better position than an adult sentenced under the Guidelines because section 5037 only creates limitations on maximum sentences and does not impose minimum sentences. Finally, the Government points out that it would not be a violation of due process to sentence a juvenile to the statutory maximum where a similarly situated adult would receive a lesser sentence under the Guidelines and cites to various cases decided under the Youth Corrections Act.

Each of these arguments is in essence misdirected. The Eighth Circuit's concern over disparate sentences directly derives from congressional intent as stated in the legislative history. It is Congress' intent which controls and the Government's arguments simply ignore the relevant legislative history. It seems ludicrous that Congress would have created a subclass of offenders who would in effect re-

placed on probation *or* committed to the custody of the Attorney General).

Alternatively, this reference may relate to section 5037 prior to the 1984 amendments, as the sentencing provisions at issue previously were contained in section 5037(b). *See* 18 U.S.C. § 5037(b) (1982).

Even if the reference to section 5037(b) does not refer to the statute prior to its amendment nor is a misprint, Congress used "if the juvenile had been tried and convicted as an adult" in reference to a sentence of probation in the exact manner as it did in relation to commitment. Accordingly, it may be assumed that it meant juveniles and adults to serve comparable "real time" sentences of both probation and incarceration.

ceive uniformly more severe sentences after the enactment of the Comprehensive Crime Control Act when the central purpose of the Act was to minimize sentencing disparities for all classes of offenders.[32] That a minimum sentence is not imposed on juveniles under section 5037 does not advance the Government's position since the issue at bar is the *maximum* sentence allowable under this section.[33] Finally, whether due process would allow Congress to impose a longer sentence on juvenile offenders is irrelevant because *Congress has not chosen to do so.* Indeed, *juveniles* never were subject to longer sentences and Congress repealed the Act under which the cases the Government cites were decided. Thus, the Government's arguments are not relevant to the interpretation of 18 U.S.C. § 5037(c)(1)(B).

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[32] Under the Government's interpretation, juvenile delinquents would in effect receive more severe sentences because the 1984 Act repealed 18 U.S.C. § 5041, which provided for the parole of juvenile delinquents. Although the 1984 Act also abolished parole for adult offenders, the Sentencing Guidelines replaced the executive clemency of parole with maximum sentences below the statutory maximum for certain categories of offenders. Thus, it seems inconsistent that Congress would have subjected juvenile offenders to the statutory maximum when it intended that the "real time" to be spent by juveniles would be similar to that spent by adults under the Act.

[33] Indeed, it is difficult to accept the Government's argument that a juvenile sentenced to the statutory maximum, as was R.L.C., is somehow "better off" than if he were sentenced to the Guidelines' maximum. As the court of appeals noted, "an adult convicted of involuntary manslaughter could be sentenced under the guidelines to the statutory maximum of three years imprisonment only if he had a criminal history category of V, representing the equivalent of four prior felony convictions." *See,* Resp. App. at 11a. There is nothing in section 5037 to indicate that the Guidelines minimum would apply.

C. To The Extent That Any Ambiguity Persists In The Meaning Of 18 U.S.C. § 5037(c)(1)(B), The Rule Of Lenity Requires That Juvenile Sentences Not Exceed Those Which Adult Offenders Could Receive Under The Sentencing Guidelines

Viewed in light of established principles of statutory interpretation, 18 U.S.C. § 5037(c)(1)(B) limits juvenile sentences to the maximum set by the Sentencing Guidelines. If, after considering all of the foregoing history, this Court still is of the opinion that the plain language of the statute and the intent of Congress are unclear regarding which maximum applies under this section, it must apply the Rule of Lenity. Although the Rule of Lenity does not apply unless there is a "grievous ambiguity or uncertainty in the language and structure of the Act," *Huddleston v. United States*, 415 U.S. 814, 831 (1974), any doubt about which limitations are incorporated, those of the statutes describing the offense or those of the Sentencing Guidelines, can only be the result of a "grievous ambiguity or uncertainty". The Rule of Lenity dictates that a court cannot construe a federal criminal statute "so as to increase the penalty that it places on an individual when such an interpretation can be based on no more than a guess as to what Congress intended." *Ladner v. United States*, 358 U.S. 169, 178 (1958). Any reservation this Court may have that the legislative history does not support the Eighth Circuit's decision can only be the result of an underlying uncertainty as to congressional intent. The Rule of Lenity favors the statutory construction that yields the shorter sentence. This is the result the Eighth Circuit reached. Accordingly, its decision should be affirmed.

CONCLUSION

The plain language of 18 U.S.C. § 5037(c)(1)(B) and the legislative history pertaining to Congress' policy of sentencing juvenile offenders supports the decision of the Eighth Circuit Court of Appeals. Accordingly, the decision of the court below is due to be affirmed.

Respectfully submitted,

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This Certifies That

ROBERT CLYK

has satisfactorily completed the Course of Study prescribed for Graduation from this School and is therefore entitled to this

Diploma

Given this month of May, nineteen hundred ninety-one.

Judy Bonga — CHAIRMAN

Dorothy M Chenais — CLERK

John M Eggen — PRINCIPAL

Ed. W. Kraemke — SUPERINTENDENT

R-84 (Rev. 5-14-80)

FINAL DISPOSITION REPORT

MTW

Leave Blank

Note: This vital report must be prepared on each individual whose arrest fingerprints have been forwarded to the FBI Identification Division without final disposition noted thereon. If no final disposition is available to arresting agency, also obtain subject's right four finger impressions on this form, complete left side and forward the form when case referred to prosecutor and/or courts. Agency on notice as to final disposition should complete this form and submit to: **Director, FBI, Washington, D.C. 20537, Attention: Identification Division.**
(See instuctions on reverse side)

FBI No.

Name on Fingerprint Card Submitted to FBI

Last	First	Middle
COOK,	Robert	Lee

Date of Birth August 31, 1973 Sex Male

Henry Fingerprint Classification

From FBI 1-B Response

State Bureau No. (SID)

Social Security No. (SOC) 474-84-9551

Contributor of Fingerprints (Include complete name and location of agency, together with ORI number.)

MISSOURI RIVER ADOL DEVEL CENTER
211 West 16th Avenue
Chamberlain, S.D. 57325

Arrest No. (OCA) 04330-041

Date Arrested or Received 02-02-1990 Received

Offenses Charged at Arrest

Involuntary Manslaughter on an Indian Reservation, 18 USC 1112(b) & 1153.

If additional space is needed, check ☐ and continue on reverse side of this form.

Final Disposition & Date
(If convicted or subject pleaded guilty to lesser charge, include this modification with disposition.)

Sentenced on 01-24-1990 to 3 years imprisonment. On 01-25-1991, sentence reduced to a term of 18 months.

This Form Submitted By:
(Name, Title, Agency, ORI No., City & State)

Community Corrections Division Of
1961 Stout Street, Room 665
Denver, Colorado 80294
ORI# CO016047C

M.A. Real — Signature
02-05-1991 — Date
Legal Technician — Title

☐ COURT ORDERED EXPUNGEMENT:
Return Arrest Fingerprint Card to Contributing Agency;
Certified or Authenticated Copy of Court Order Attached.

Right Four Fingers Taken Simultaneously

RECEIVED
AT PIERRE, S. D.
MAR 22 1991
U.S. PROBATION OFFICE
DISTRICT OF SOUTH DAKOTA

MAR 21 199

APPENDIX B

2a

BEST AVAILABLE COPY

U.S. Department of Justice
Bureau of Prisons

Notice of Release and Arr

SECTION ONE - To Be Completed by Institution Officials

MAR 2 · 19[illegible]

Name COOK, Robert Lee Reg. No. 04330-041 FBI No. [illegible] S. PROBATION U·

Type of Release GCT Rel (Parole or M/R) Was there a previous release on this sentence? No

Mailing address of proposed residence Box 512, Red Lake, MN 56671

The above-named person was released from MISSOURI RIVER ADOLESCENT DEVELOPEMENT CENTER 211 West 16th Avenue, Chamberlain, S.D. 57325 (Name of institution)

at 8:50 AM o'clock, on March 20, 1991. Transportation was arranged to Red Lake, MN (City and State) via auto (name of bus, train, airline, or by auto)

Name of detaining authority, if any None (Agency and location)

If not released to detainer, estimated date of arrival at residence

Gratuity: $ Other money in personal account: $ Total: $

Amount given to releasee: $ Amount mailed: $

Address to which mailed:

Special Instructions:

Chief U.S. Probation Officer of district of residence Jack R. Saylor

District of South Dakota Address 212 U.S. Courthouse 400 South Phillips, S.D. 57102-0974

SECTION TWO - To Be Completed by Releasee and Taken or Mailed to Probation Officer Within Three Days After Arrival in District of Residence.

I have this day arrived at (City and State)

Date released from detainer (if any) My home address will be

RECEIVED
AT [illegible]RE, S. D.
MAR 22 1991
U.S. PROBATION OFFICE
DISTRICT OF SOUTH DAKOTA

(Signature of probation officer to whom assigned) 3-22-91 (Date of releasee's arrival)

INSTRUCTIONS

INSTITUTION: In parole or mandatory release cases, prepare 4 copies. Give original to releasee; mail a copy to the United States probation officer and a copy to the Parole Commission; retain a copy for your file.
In expiration cases, prepare 2 copies: Mail original to United States probation officer for information only and retain a copy for your file.

RELEASEE (Parole or M/R): Upon arrival, report immediately to the United States probation officer. If released to a detainer, report this form until no longer in custody; then take or mail to the United States probation officer to whom you are assigned.

RECEIVED P.M.
MAR 2[illegible] 1991
U.S PROBATION OFFICE
ST PAUL MINNESOTA

Parole Form I-13 Dec. 1979
GPO 863-993

APPENDIX C

38

BEST AVAILABLE COPY